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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**DECLARATION OF JAMES LEE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION AND
APPOINTMENT OF CLASS
REPRESENTATIVES AND CLASS
COUNSEL**

Judge: Hon. Yvonne Gonzalez Rogers
Date: September 20, 2022
Time: 2:00 p.m.

DECLARATION OF JAMES LEE

I, James Lee, declare as follows.

1. I am a partner with the law firm of Boies Schiller Flexner LLP (“BSF”), counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of Florida and admitted *pro hac vice* for this case. Dkt. 9. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration in support of Plaintiffs’ motion for class certification and appointment of class representatives and class counsel.

3. The three law firms representing Plaintiffs, Boies Schiller Flexner, Morgan & Morgan, and Susman Godfrey (collectively, “Counsel”), have collectively invested significant resources into investigating and litigating this case. Counsel now together move to be appointed co-lead class counsel. *See also* Bonn Declaration; Yanchunis Declaration.

4. Counsel have invested substantial resources and time in the investigation of the factual and legal bases for claims against Google. Among other things, they have:

- Identified and investigated the technological means by which Google surreptitiously and illegally tracks consumers.
- Analyzed Google’s disclosures regarding private browsing mode.
- Investigated past allegations of Google’s violations of privacy interests.
- Consulted with technology experts to assist in developing the case.
- Researched and analyzed potential legal claims against Google.
- Evaluated numerous potential class representatives.

1. Relevant Firm Expertise

5. Boies Schiller Flexner’s experience in handling complex class actions is extensive. For years, the firm has successfully litigated cutting edge, high-stakes class actions on both the plaintiff-side and defense-side, giving the firm the experience and knowledge necessary to provide the proposed classes the best representation possible. BSF has used its experience on both sides of significant class action cases to predict opposing counsel’s litigation strategy, uncover hidden

leverage points, anticipate key issues, and accurately assess risk and manage costs. In the last decade, BSF has collected billions of dollars in settlements for plaintiffs. But unlike many firms, BSF also has extensive experience in trying complex cases, including class actions, to verdict.

Notable settlements and victories in complex cases include:

- *In re: Blue Cross Blue Shield Antitrust Litigation*: BSF serves as co-lead counsel in a class action on behalf of insureds against Blue Cross Blue Shield involving violations of the Sherman Act. The case was one of the most hotly contested cases in the last decade, involving over 30 separate defendants, more than 50 separate law firms, and over 1,000 lawyers. In 2020, Blue Cross Blue Shield agreed to settle the case for \$2.7 billion, as well as injunctive relief that will impact the health insurance market across the country. The settlement is currently subject to final approval by the Northern District of Alabama.
- *In re: Takata Airbag Products Liability Litigation*: BSF serves as co-lead counsel in this MDL class action involving a uniform defect in airbag inflators found in cars made by the world's largest automakers. The Takata Airbag MDL has resulted in over \$1.5 billion in settlements to date, including specific protections to consumers who have had their automobiles recalled as a result of the uniform defect. BSF continues to litigate claims against non-settling parties General Motors, Fiat Chrysler, and Mercedes Benz.
- *National Prescription Opiate MDL*: BSF serves as lead counsel on behalf of the Cherokee Nation, in what was the MDL's tribal bellwether case. BSF recently secured a \$75 million settlement against the opioid distributors and is preparing for trial against the remaining defendant pharmacies Walmart, Walgreens, and CVS.
- *Hoffman v. American Express*: BSF represented American Express at trial and on appeal in a certified nationwide class action where the plaintiffs sought to recover more than \$500 million. American Express brought in BSF after the class was certified, and BSF secured and defended on appeal a judgment in favor of American Express on all claims.
- *Mikaelyan v. Howard*: BSF obtained dismissal of class action lawsuit asserting violation of FACTA based on alleged printing of information on receipts, based on inadequacies tied to standing and failure to adequately allege any willful violation.
- *Satchell v. Golden State Warriors*: BSF obtained dismissal with prejudice on motions to dismiss brought by an alleged class of millions of users seeking billions of dollars in statutory damages, in a data misuse class action involving sound-based beacon technology for one of basketball's favorite teams.
- *Benton v. Clarity*: BSF obtained dismissal in a data misuse class action involving short-term loans data, after successful motion practice, where plaintiffs sought billions of dollars in damages for millions of users, on the basis of the Fair Credit and Reporting Act.

- *Pavone v. LexisNexis*: BSF defeated class certification in a precedential data misuse class action involving driver and vehicle data, which could have negatively affected the ability to use millions of public records nationwide.

6. Through its creative, aggressive, and efficient approach to litigation, combined with its proven track record of success, BSF has earned a world-class reputation in the class action arena. The firm “is known as the go-to law firm for high stakes, high profile litigation” (*The Washington Post*), and has been described as a firm of “casual brilliance” (*The National Journal*), a “Galaxy of Bright Lights” (*The American Lawyer*), and “the most powerful litigation turbine America” (*Law Dragon*). Some of the most sophisticated companies, which have their choice of virtually any law firm in the country, regularly choose BSF’s litigation expertise for their most important matters. These clients include and have included, for example, Carnival Corporation, NASCAR, Oracle Corporation, Federal Express, Atria Group, NextEra Energy, the New York Yankees, and Sony Corporation of America.

7. BSF has the depth and breadth of experience, personnel, and financial resources to litigate this case effectively, and it has a track record of committing those resources to class actions it has litigated and achieving exceptional results for its clients.

2. Team Members

8. The BSF lawyers working on this matter include managing partner David Boies, partners Mark C. Mao, James Lee, Alison Anderson, and Beko Reblitz-Richardson, and associates Rossana Baeza and Erika Nyborg-Burch.

9. **David Boies:** David has been the Chairman and a Managing Partner of Boies Schiller Flexner since its founding in 1997. David has been selected as one of the 100 Most Influential People in the World by Time Magazine (2010). He has been named Global International Litigator of the Year by Who’s Who Legal an unprecedented seven times. David has been named the Litigator of the Year by The American Lawyer; the Lawyer of the Year by The National Law Journal (twice); the Antitrust Lawyer of the Year by the New York Bar Association; Best Lawyers in America from 1987-2021; Lawdragon 500 Leading Lawyers; and an Eminent Practitioner by

1 Chambers USA. He was named one of the Top 50 Big Law Innovators of the Last 50 Years by
2 The American Lawyer in 2013.

3 10. David is the recipient of Honorary Doctor of Laws from the University of Redlands
4 (2000), New York Law School (2007), University of New Hampshire School of Law (2013), and
5 New York University (2013) and an Honorary Doctor of Letters from the Chicago Theological
6 Seminary (2011). His awards include the Award of Merit from the Yale Law School, the ABA
7 Medal from the American Bar Association, the Vanderbilt Medal from New York University Law
8 School, the Pinnacle Award from the International Dyslexia Association, the William Brennan
9 Award from the University of Virginia, the Role Model Award from Equality Forum, the Lead by
10 Example Award from the National Association of Women Lawyers, the Torch of Learning Award
11 from the American Friends of Hebrew University, the Eisendrath Bearer of Light Award from the
12 Union for Reform Judaism, and a Lifetime Achievement Award from the Mississippi Center for
13 Justice.

14 11. David served as Chief Counsel and Staff Director of the United States Senate
15 Antitrust Subcommittee in 1978 and Chief Counsel and Staff Director of the United States Senate
16 Judiciary Committee in 1979. In 1991-1993, he was counsel to the Federal Deposit Insurance
17 Corporation, recovering \$1.2 billion from companies who sold junk bonds to failed savings and
18 loan associations. In 1998-2000, he served as Special Trial Counsel for the United States
19 Department of Justice in its antitrust suit against Microsoft. David also served as the lead counsel
20 for former Vice-President Al Gore in connection with litigation relating to the 2000 election
21 Florida vote count. As co-lead counsel for the plaintiffs in Perry v. Brown, he won the first
22 judgment establishing the right to marry for gay and lesbian citizens under the U.S. Constitution.

23 12. David was born in Sycamore, Illinois on March 11, 1941. He attended the
24 University of Redlands (1960-62), and received a B.S. from Northwestern University (1964), an
25 LL.B., magna cum laude from Yale University (1966), and an LL.M. from New York University
26 (1967). He is a member of Phi Beta Kappa, a Fellow of the American College of Trial Lawyers
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and the International Academy of Trial Lawyers; and a Trustee of the National Constitution Center, Cold Spring Harbor Laboratory, New York University Law School Foundation and St. Luke's-Roosevelt Hospital Center. He is the author of numerous publications including *Courting Justice* (2004), *Redeeming the Dream* (with Ted Olson), and *Public Control of Business* (with Paul Verkuil), published by Little Brown in 1977. He has taught courses at New York University Law School and Cardozo Law School.

13. **Mark C. Mao:** Mr. Mao, a Partner at BSF's San Francisco office and the Practice Group Leader of BSF's IP Litigation Practice Group, is one of the country's leading experts in the privacy field. He has resolved more than 400 cases in litigation. The consumer class actions he resolves often include evolving privacy and regulatory issues, such as in the areas of data breach and misuse, product liability, wiretap acts, the Fair Credit Reporting Act, and unfair and deceptive acts and practices litigation. Mr. Mao is certified by the International Association of Privacy Professionals and was one of its first Fellows of Information Privacy. He is also a Certified Information Privacy Technologist and a Certified Information Privacy Professional for the United States, having completed over a hundred various privacy compliance and transactional projects. In addition to having litigated important privacy cases such as *Satchell v. Golden State Warriors*, *Benton v. Clarity*, and *Pavone v. LexisNexis*, Mr. Mao's experience also includes the following representative matters:

- *Lozano v. Codemetro*: Favorably resolved data breach class action claim in Southern California against a medical services software against hundreds of thousands of consumers.
- *Winstead v. ComplyRight*: Favorably resolved data breach class action claim in N.D. Ill. against publishing company against hundreds of thousands of consumers.
- *Nguyen et al. v. Caboki*: Obtained dismissal and costs against class action claims alleging illegal recording by customer support of retailer seeking tens of millions of dollars in statutory damages.
- *CFPB v. The Source For Public Data*: Obtained a district court and then an appellate court win in case against the Consumer Financial Protection Bureau alleging that a data sourcing company may be a consumer reporting agency.

- *BaronsMedia.com v. Exponential Interactive, Inc. and related cases*: Obtained favorable resolution against over a dozen business claimants, who alleged that they were substantially overcharged for years of targeted advertising services, involving hundreds of millions of transactions.
- *Koenig v. Lime Crime Inc.*: Obtained a favorable resolution in a data breach class action involving malicious code injection in one of the web's most popular social influencer websites.
- *Koles v. Yapstone, Inc. (In re Yapstone Data Breach Litig.)*: Obtained a favorable resolution in a data breach class action involving the alleged vulnerability of a popular payment application and relating to the records of hundreds of thousands of consumers.
- *Piper v. Brian Kemp*: Obtained a dismissal, without filing motions to dismiss, in one of the Southern United States' largest data breaches allegedly involving over six million vote records.

Critically, Mr. Mao designed the case theories in this case and led all pre-investigation efforts. Mr. Mao graduated from the University of California, Berkeley School of Law, and is currently the alumni president for the home chapter of the law school.

14. **James Lee:** Mr. Lee, a Partner in BSF's Miami office and Practice Group Leader of BSF's Class Actions, Opt-Outs, and Multi-District Litigation Practice Group, serves as trial counsel in high-stakes litigation across several practice areas. He has served as lead counsel and trial counsel on behalf of plaintiffs and defendants in numerous complex matters ranging from product liability, securities, and commercial litigation. He has been tapped to serve as trial counsel by high profile clients such as Philip Morris USA, FedEx Ground, and some of the wealthiest individuals in the world. He also has vast experience representing plaintiff classes in large scale class actions, such as serving as lead counsel for BSF in its representation of the plaintiff class in the Takata Airbag MDL. His work on this case helped to achieve over \$1.5 billion in settlements on behalf of class members. He is currently prosecuting claims against General Motors, Fiat Chrysler and Mercedes Benz in the Takata Airbag MDL. In addition, Mr. Lee led the drafting efforts for the initial complaint in this case, served as the primary contact for all of the named Plaintiffs, and led the defense of their depositions. Mr. Lee graduated from Stanford Law School.

15. **Alison Anderson:** Ms. Anderson, a Partner in BSF's Los Angeles Office, is a seasoned trial lawyer with significant experience litigating complex criminal fraud trials, including

1 taking seven cases to jury trials. Ms. Anderson joined BSF in the fall of 2021 after working in the
2 Fraud Section of the Criminal Division of the U.S. Department of Justice for nearly a decade, first
3 as a trial attorney in the Securities and Financial Fraud Unit and later as an Assistant Deputy Chief
4 in the Strategy, Policy, and Training Unit. Ms. Anderson's trial experience included co-leading the
5 team in the high-profile *United States v. Connolly* matter, which has influenced the way corporate
6 clients approach cooperation with government investigations and the way defense counsel are
7 litigating these issues on behalf of individual clients. She also conducted high-profile
8 investigations of Fortune 500 companies like Deutsche Bank and Volkswagen, securing
9 resolutions that levied significant fines and established compliance monitorships. As an Assistant
10 Deputy Chief, Alison oversaw the agency's recent criminal corporate resolutions with The Boeing
11 Company, JPMorgan Chase & Co., Bank of Nova Scotia, United Airlines, Inc., and others. Since
12 joining BSF, Ms. Anderson has worked on matters involving class actions, trade secrets, antitrust,
13 breach of contract, and criminal defense. Ms. Anderson graduated from Rutgers School of Law –
14 Camden.

15 16. **Beko Reblitz-Richardson:** Mr. Reblitz-Richardson, a Partner at BSF's San
16 Francisco office and a Practice Group Leader of BSF's Cybersecurity and Data Privacy Practice
17 Group, is an experienced trial lawyer who has successfully litigated matters for plaintiffs and
18 defendants in privacy matters and class action cases. Since joining BSF in 2005, he has obtained
19 favorable trial and pre-trial outcomes in a number of significant class actions. To name a few, in
20 *Hoffman v. American Express*, he represented American Express at trial secured a judgment in
21 favor of American Express on all claims, and then successfully defended that judgment on appeal.
22 In *Mikaelyan v. Howard*, he obtained a dismissal of a class action lawsuit. Mr. Reblitz-Richardson
23 also represented Oracle at trial in a number of actions, including one where the firm obtained a
24 \$1.3 billion jury verdict against SAP and one where the firm obtain an award of over \$100 million
25 against Rimini Street. Mr. Reblitz-Richardson was also a part of the team that successfully
26 represented Starr International at trial with AIG, securing a judgment for Starr International. Mr.
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1 Reblitz-Richardson also represented the plaintiffs at trial and on appeal in their challenge to
2 California's Proposition 8, litigation that restored the right of same-sex couples to marry in
3 California. His other clients have included Sony, Tyco, Broadcom, HSBC, and others. Mr. Reblitz-
4 Richardson graduated from the University of California, Berkeley School of Law.

5 17. **Rossana Baeza:** Ms. Baeza, an Associate at BSF's Miami office, focuses on
6 complex and appellate litigation. She has been involved in multidistrict litigation proceedings,
7 such as the Takata Airbag MDL class action and the National Prescription Opiate MDL. She
8 represents the Cherokee Nation in the MDL's tribal bellwether case, which recently secured a \$75
9 million settlement against the opioid distributors. Ms. Baeza has experience in motions practice
10 and briefing, including helping win dismissals of claims in two matters, helping successfully
11 oppose dispositive motions in another matter, and successfully obtaining a reversal in an appeal
12 before the U.S. Court of Appeals for the Tenth Circuit. Ms. Baeza graduated from Washington and
13 Lee University School of Law.

14 18. **Erika Nyborg-Burch:** Ms. Nyborg-Burch is an Associate at BSF's San Francisco
15 office where she represents plaintiffs and defendants in complex trial and appellate litigation. Her
16 practice focuses on high-stakes commercial disputes and class actions. Ms. Nyborg-Burch is also
17 the pro bono liaison for the firm's San Francisco office and maintains an active pro bono practice.
18 Before joining the firm, she practiced civil rights litigation with the ACLU and worked as an
19 immigration public defense attorney at The Bronx Defenders. Ms. Nyborg-Burch clerked for the
20 Honorable Thomas L. Ambro of the United States Court of Appeals for the Third Circuit and
21 graduated from Yale Law School.

22 19. **Augusto Cividini:** Mr. Cividini is an associate at BSF's Miami office, with a focus
23 on representing plaintiffs and defendants in complex litigation including multidistrict litigation,
24 class actions, antitrust lawsuits, and commercial disputes. Mr. Cividini is also co-chair of the firm's
25 Hispanic/Latinx Affinity Group and a member of the firm's LGBTQ+ Affinity Group. Before
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1 joining the firm, Mr. Cividini worked with local advocacy organizations in their hometown of
2 Miami. Mr. Cividini graduated from Georgetown University Law Center.
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4 I declare under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct. Executed this 20th day of June, 2022, at Miami, Florida.
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7 /s/ James Lee
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